

U.S. Serial No. 10/756,916

Filed: January 13, 2004

AMENDMENT AND RESPONSE TO OFFICE ACTION DATED 8/16/05

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REMARKS

I. Introduction

Upon entry of the present amendment, claims 1-47 will be pending in this application. Claim 1 has been amended to clarify the features of the invention. Support for these amendments can be found in the specification at Figures 4b and 5b, which show that the products 6 are discharged when they arrive at a certain point in the treatment section when the discharge member 70 assumes its active position, and at Figures 4a and 5a, which show that the products 6 are not discharged and move past the discharge point when the discharge member 70 is in an inactive state. No new matter has been added.

II. Rejections based on 35 U.S.C. § 102

The Examiner has rejected claims 1-5, 8-15, 17-27, 30, 35, 36 and claims 39-45 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,012,808 to Strong. Applicants respectfully request reconsideration and withdrawal of the rejection.

Applicants' invention is directed to a device for treating meat products including at least one treatment section having a space for accommodating meat products. The space includes a treatment device for treating the products and a discharge device for discharging the products at a discharge point from the space of the treatment section. The discharge device can assume a discharging position for discharging products which arrive at the discharge point and can assume an inactive state in which products which arrive at the discharge point are moved past the discharge point without being discharged. In the discharging position, the discharge device is located at least partially within the space that accommodates the products.

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Applicants respectfully submit that *Strong* fails to teach each and every element of the claims, as amended. *Strong* discloses a method and device for enhancing the pick-up of marinade by poultry, such as chicken. The device includes a trough 10 for containing liquid material and a screw conveyor. Col. 2, lines 65-68. As the screw conveyor rotates, it carries the chicken pieces generally longitudinally from one end of the conveyor to the other. Col. 3, lines 12-15. The device includes a discharge chute 44 to receive the chicken pieces and convey them to a suitable conveyor for the next processing step. Col. 4, lines 7-9. Discharge vanes 40 are provided to scoop up the chicken pieces and carry them upwardly until they are carried out of the marinade to an elevation at which they will freely slide and tumble downwardly onto the discharge chute 44. Col. 4, lines 2-6. The products move under the influence of gravity and are unable to move past the discharge chute 44 without being discharged. Thus, *Strong* does not teach all the elements of claim 1. Claims 2-5, 8-15, 17-27, 30, 35-36 and 39-45 ultimately depend on claim 1, and are allowable by virtue of their dependency.

III. Rejections based on 35 U.S.C. § 103

The Examiner has rejected claims 6, 7 and 16 under 35 U.S.C. § 103(a) as being unpatentable over *Strong* in view of U.S. Patent No. 4,791,705 to Corominas.

The Examiner has rejected claims 28 and 29 under 35 U.S.C. § 103(a) as being unpatentable over *Strong* in view of U.S. Patent No. 4,836,099 to Thirode.

The Examiner has rejected claim 31 under 35 U.S.C. § 103(a) as being unpatentable over *Strong* in view of U.S. Patent No. 5,284,085 to Palm.

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The Examiner has rejected claim 32 under 35 U.S.C. § 103(a) as being unpatentable over *Strong* in view of U.S. Patent No. 4,446,779 to Hubbard et al.

The Examiner has rejected claims 33, 34, 37, 38, 46 and 47 under 35 U.S.C. § 103(a) as being unpatentable over *Strong* in view of U.S. Patent No. 4,214,518 to Petsche.

Applicants respectfully request reconsideration of these rejections and withdrawal thereof. To establish a *prima facie* case of obviousness, three criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references when combined must teach or suggest all the claim limitations. See M.P.E.P. § 2142.

One with skill in the art would not be motivated to modify *Strong* to achieve Applicants' invention. Applicants' device permits products to be treated multiple times along a trajectory including a discharge point without discharging the products. The trajectory may be relative short because it can be repeated a number of times. This enables a simply constructed treatment section, such as a drum, to be used. With the *Strong* device, it is not possible to move products past a discharge point. Thus, the trajectory of the products to be treated must be long enough to achieve proper treatment of the products before they arrive at the discharge point, necessitating a more complicated design, such as the trough and vanes shown in *Strong*.

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There also would be no expectation of success in modifying *Strong*. For example, if *Strong* was modified so that products which arrive at the end of the trough 10 do not topple over the edge of chute 44, the products could move past the discharge point without being discharged, but such a modification would cause the *Strong* device to function improperly as the products would accumulate at the end of the trough 10. Furthermore, *Strong* teaches away from such a modification at column 3, line 54-56, where it states that "When the chicken pieces reach the far end of the chicken marinating assembly, it is necessary to remove them from the trough."

Finally, the combinations cited by the Examiner fail to teach all the elements of the claims. As explained above, *Strong* fails to teach that products which arrive at the discharge point may move past the discharge point without being discharged. None of the references cited by the Examiner teach this limitation. Thus, a *prima facie* case of obviousness has not been shown.

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CONCLUSION

In light of the amendments and the above remarks, Applicants are of the opinion that the Office Action has been completely responded to and that the application is now in condition for allowance. Such action is respectfully requested.

If the Examiner believes any informalities remain in the application that may be corrected by Examiner's Amendment, or there are any other issues that can be resolved by telephone interview, a telephone call to the undersigned attorney at (404) 815-6409 is respectfully solicited.

Respectfully submitted,



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